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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 09.12.2016

PRONOUNCED ON : 02.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE **B. GOKULDAS**

Crl.RC.No.772 of 2016

and Crl.MP.No.11050 of 2016

Ganapathy

.. Petitioner

Vs.

The State represented by
Inspector of Police,
Anti Land Grabbing Special Cell,
Thoothukudi.

.. Respondent

PRAYER : Revision is filed under Section 397 & 401 Criminal Procedure Code, to call for records in Cr.MP.No.625/2016 and to set aside the orders passed in Cr.MP.No.625 of 2016 in Cr.MP.No.380 of 2015 dated 22.09.2016 on the file of the learned Special Court for Land Grabbing, Thoothukudi.

For Petitioner : Mr.KA.Ramakrishnan.

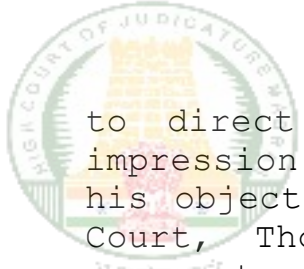
For respondent : Mrs.S.Prabha, GA (Crl.side)

ORDER

This Criminal revision is filed against the order dated 22.09.2016 passed by the Special Court for Land Grabbing cases, Thoothukudi in Cr.MP.No.625 of 2016 in Cr.MP.No.380 of 2016.

2. The case of the petitioner is that the defacto complainant is the resident of Chennai, preferred a complaint in Cr.No.32 of 2013 on the file of the respondent police, the defacto complainant obtained certain ancestral properties situated in S.No.978/2, 989 of Meelavittan village, Tuticorin District. The Revenue Department has erroneously included the name of one Francisammal and deleted the name of Danial Ponmanickam. The revision petitioner who is arrayed as A4 and the other accused conspired together and identified a person as Francisammal and executed a sale deed vide document No.689 of 2011. The first accused on the strength of the above said sale deed transferred the said property in favour of 3rd accused vide document No.1010 of 2012. Thereafter, the defacto complainant coming to know about the said transactions, lodged a complaint with the respondent police and the respondent police in turn registered the FIR for the offences under Section 419, 465, 468 471, 420 r/w.120(b) IPC.

3. In the meanwhile, the petitioner obtained an anticipatory application in Cr.MP.No.372 of 2014 before the Principal Sessions Judge, Thoothukudi. At this juncture, the respondent police preferred an application in Cr.MP.No.380 of 2015, under Section 311(A) of Cr.PC



to direct the petitioner to give sample signature and thumb impression to facilitate the investigation. The petitioner filed his objections vide Cr.MP.No.625 of 2016 before the Land Grabbing Court, Thoothukudi. The trial judge, after considering the arguments of the complainant and the objections raised by the revision petitioner rejected the claim of the petitioner herein. Hence, the revision before this Court.

4. The learned Government Advocate (criminal side) filed counter, wherein it is stated that petitioner was not arrested by the respondent police, but the petitioner surrendered in the Special Court for Land Grabbing cases, Thoothukudi on 19.12.2014. Hence, the order of the trial Court does not warrant any interference and the object of the trial Court must not be misinterpreted.

5. Heard the rival submissions made on both sides and perused the records.

6. The learned counsel for the petitioner contended that the revision petitioner was not arrested by the respondent police at any point of time. The petitioner has obtained anticipatory bail after registering the FIR by the respondent police. The trial Court rejected the claim of the petitioner and failed to appreciate the proviso enacted under Section 311(A) Cr.PC. The FIR was registered and the case was pending before the Land Grabbing Court. The land grabbing act was stayed by the Hon'ble Supreme Court of India, the question of proceeding further with the investigation does not arise herein.

7. The learned counsel for the petitioner in support of his contentions relied on following judgments :-

1. (2012) 191 DLT 225 - Sapan Haldar and another v. State (Full bench judgment of Delhi High Court)

2. 2012 (2) MWN (cr.) 439 (DB) - Balasubramanian V. The State of Tamil Nadu and others.

3. 2009-2-LW-1429 - S.Thamizharasan v. The State of Tamil Nadu and others.

4. Indian Kanoon -
<http://indiankanoon.org/doc/17648259/> - Balaji and another v. The State rep by the Inspector of Police, Siruganur police station, Trichy.

8. It is pertinent to extract Section 311(A) Cr.PC :-

311-A. Power of Magistrate to order person to give specimen signatures or handwriting :- If a Magistrate of the first class is satisfied that, for the purpose of any investigation or proceeding under this code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to



that effect and in that case the person to whom the order and shall give his specimen signatures or handwriting.

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

9. According to the petitioner, the trial judge failed to consider the proviso provided under Section 311(A) Cr.PC. If the petitioner is arrested by the police at any point of time, relevant to the case, the trial Court has power to direct the accused person to appear before the Court to give specimen signatures or handwriting for proceeding under the code. But, in this case, apprehending arrest at the hands of the respondent/police, the accused obtained an anticipatory bail and the trial judge has no power to pass any order under this Section. At present, the land grabbing act was also stayed by the Hon'ble Supreme Court.

10. In the result, the criminal revision is allowed by setting aside the order dated 22.09.2016 made in Cr.MP.No.625 of 2016 in Cr.MP.No.380 of 2016 on the file of the learned Special Court for Land Grabbing, Thoothukudi. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Judge,
Special Court for Land Grabbing, Thoothukudi.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.KA.Ramakrishnan, Advocate SR.No. 58456

Judgment in
Crl.RC.No.772 of 2016
02.06.2017.

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